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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

YU ZHANG,

Plaintiff and Appellant,

v.

YAMIN LI et al.,

Defendants and Respondents.

B218013

(Los Angeles County  
Super. Ct. No. BC378384)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Abraham Khan, Judge. Affirmed.

Yu Zhang, in pro. per., for Plaintiff and Appellant.

Gilbert, Kelly, Crowley & Jennett, Peter J. Godfrey and Timothy W. Kenna for  
Defendants and Respondents.

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This case arises out of a motor vehicle accident involving a sports utility vehicle (SUV) and a pedestrian. Appellant Yu Zhang suffered a fractured ankle after respondent Yamin Li ran over his foot. On appeal, Zhang's principal challenges are to the sufficiency of the evidence of the jury finding that he was 65 percent at fault for the accident and to the amount of damages awarded to him. We find no error and affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On April 15, 2007, Yu Zhang was painting Chinese calligraphy on an exterior wall of Mao's Kitchen, a restaurant in Los Angeles. In order to paint the wall, Zhang stood in the restaurant's parking lot. Yamin Li, a partial owner of the restaurant, drove her SUV into the parking lot. Li drove over Zhang's foot, and he suffered multiple fractures to his ankle and leg bone. Zhang then underwent two surgeries – one to install plates and screws in his ankle, and the other to remove them.

Zhang sued Li for personal injury and sought over \$700,000 in compensatory damages. At trial, the parties disputed the cause of the accident and the nature and extent of Zhang's injuries. Zhang maintained that he stood stationary when Li ran over his foot. Li claimed that Zhang walked backwards into her vehicle.

Several witnesses testified that Zhang walked backwards into Li's SUV. Police Officer Alejandro Lopez testified that shortly after the accident, Zhang said he had walked backwards to observe his work and felt something hit his leg. Lopez concluded that Li's right rear tire ran over Zhang's foot. Dr. Philip Bretsky, a physician who spoke with Zhang when he was admitted to Cedar-Sinai Medical Center, testified that Zhang told him he stepped back to evaluate his painting and a car ran over his foot. Richard Robertson, an expert in biomechanics, reviewed Zhang's medical records and concluded that Zhang suffered a rotational injury, not a crush injury. Robertson opined that the injury was most consistent with Zhang walking backwards into Li's vehicle. Li testified that Zhang told her that he wanted to observe his work and "walked backwards without looking" into her moving vehicle. Li also testified that the front portion of her car did not

make any contact with Zhang. Li's husband, testified that Zhang told him he walked backwards to observe the painting.

Zhang testified that he stood stationary when Li ran over his foot. According to Zhang, the front of Li's vehicle hit his hip; he lost balance and fell. Zhang testified he could not have told Lopez or Li that he had walked backwards because he did not know the English word "backwards." Zhang testified that he was unable to work since the accident.

Dr. Charles Moon treated Zhang. According to Dr. Moon, Zhang's fracture was "a fairly severe ankle fracture [but] relatively speaking a dime a dozen." Dr. Moon indicated that Zhang should have been able to return to work by August 2007. When Zhang continued to use crutches in October 2007, Dr. Moon was "baffle[d]" by Zhang's lack of progress. Dr. Moon testified that Zhang's progress would have been faster if Zhang had followed his recommendations for bearing weight on his foot and attending physical therapy.

The parties disputed whether as a result of the accident, Zhang suffered from complex regional pain syndrome (CRPS), a condition where as a result of injury to a nerve, a person can experience severe pain and loss of function. Drs. Barry Ludwig and Joshua Prager evaluated Zhang and found he did not suffer from CRPS. Dr. Jason Berkley, on the other hand, concluded that Zhang suffered from CRPS.

The jurors found both Li and Zhang at fault, and they further concluded that Li was 35 percent responsible and Zhang was 65 percent responsible for the accident. The jury awarded Zhang \$59,581 in past medical expenses; \$5,000 for past loss of earnings; \$10,000 for past pain and suffering; \$1,000 in future medical expenses and nothing for future economic loss or future pain and suffering. The total amount of damages was \$75,581. But, because of Zhang's relative fault, judgment was entered in the amount of \$26,453. Zhang appealed in propria persona.

## **DISCUSSION**

Zhang argues (1) there was no evidence to support the jury finding that he was partially responsible for the accident; (2) the jury should have awarded additional

damages; (3) the court erred in excluding his medical expert and his diagram of the parking lot outside Mao’s Kitchen; (4) Li was criminally liable; and (5) jurors were forced to stay on the jury even though they had scheduling conflicts.

“California appellate courts are generally constrained by three principles of appellate review: First, the trial court’s judgment is presumptively correct, such that error must be affirmatively demonstrated, and where the record is silent the reviewing court will indulge all reasonable inferences in support of the judgment. [Citations.] . . . [Citations.] . . . [Citations.] . . . [¶] Second, findings must be sustained if they are supported by substantial evidence, even though the evidence could also have justified contrary findings. [Citations.] When combined with the foregoing principle this means that an appellant who challenges a factual determination in the trial court—a jury verdict, or a finding by the judge in a nonjury trial—must marshal all of the record evidence relevant to the point in question and affirmatively demonstrate its insufficiency to sustain the challenged finding. [Citation.] [¶] Third, even if error is demonstrated it will rarely warrant reversal unless it appears “‘reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.’” (*Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 557, italics omitted.) As we explain, applying the appropriate standard of review, Zhang demonstrates no error.<sup>1</sup>

### ***1. Zhang’s Relative Fault***

Zhang challenges the sufficiency of the evidence to find him partly responsible for the accident, arguing that he testified he did not walk backwards. We must sustain the finding if it is supported by substantial evidence, even if the record contains contrary evidence. (*Yield Dynamics, Inc. v. TEA Systems Corp.*, *supra*, 154 Cal.App.4th at

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<sup>1</sup> The appellant is required to “present an adequate argument including citations to supporting authorities and to relevant portions of the record.” (*Yield Dynamics, Inc. v. TEA Systems Corp.*, *supra*, 154 Cal.App.4th at p. 557.) In his opening brief, Zhang has failed to cite to any supporting authorities and therefore has technically forfeited all of his arguments. (*Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 956.)

p. 557.) “If conflicting inferences may be drawn regarding a material fact the appellate court is required to draw the inference favorable to the judgment. ‘Even if this court were of the opinion that that determination was wrong, it would not have the power to substitute its deductions for those of the trial court. For, as has so often been said, when opposing inferences may reasonably be drawn from the facts in a case, the findings of the trial court will not be set aside.’ [Citations.]” (*Doupnik v. General Motors Corp.* (1990) 225 Cal.App.3d 849, 868.)

The determination of relative fault is a question for the jury. (*Rangel v. Graybar Electric Co.* (1977) 70 Cal.App.3d 943, 945.) Ample evidence supported the finding that Zhang walked backwards into Li’s SUV. Shortly after the accident, Zhang told Officer Lopez, Dr. Bretsky, Li and her husband that he walked backwards into the SUV as he observed his painting. Robertson opined that Zhang’s injury was consistent with walking backwards. This evidence supports the jury finding that Zhang was partially responsible even though Zhang testified differently.<sup>2</sup> (See *id.* at p. 946 [sufficient evidence supported finding of relative fault of pedestrian in motor vehicle accident].)

## **2. Amount of Damages**

Zhang argues the jury should have awarded him \$115,000 in damages for past medical costs. Zhang also contends that the jury should have awarded him \$500,000 for pain and suffering, \$75,000 for past lost earnings, and \$20,000 for future lost earnings. We find no error in the jury’s damage calculation.

### **A. Background**

Dr. Ludwig testified as follows: the bills from Cedars-Sinai Medical Center “are so outrageously high[. T]hey charge what they charge. But [the amount] they get reimbursed, [] is not nearly what they charge.” Dr. Ludwig also testified that some of Zhang’s expenses were incurred for his stay in a skilled nursing facility at a time when

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<sup>2</sup> The jury was instructed with CACI No. 710 as follows: “The duty to use reasonable care does not require the same amount of caution from drivers and pedestrians. While both drivers and pedestrians must be aware that motor vehicles can cause serious injuries, drivers must use more care than pedestrians.”

Zhang should have been independent enough to be home. As previously mentioned, Dr. Moon described Zhang's fracture as "a fairly severe ankle fracture [but] relatively speaking a dime a dozen." Dr. Moon testified that an outpatient procedure for removing the plates and screws would cost approximately \$20,000. He further testified that an outpatient procedure for placing the plates and screws would cost about \$25,000 to \$30,000. For an inpatient procedure, the plates and screws insertion may cost up to \$50,000 or \$60,000. Dr. Moon did not know the cost of staying in the hospital or an emergency room visit.

Zhang's medical bills were admitted into evidence over objection (but were not included in the appellate record). In overruling defense counsel's objection to the bills, the trial court noted the dearth of testimony regarding the necessity for all of the bills. Zhang's counsel argued to the jury that Zhang's medical bills totaled \$115,000. As previously noted, the jury awarded Zhang \$59,581 in medical expenses.

#### *B. Analysis*

"The measure of damages suffered is a factual question and as such is a subject particularly within the province of the trier of fact." (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 65, fn. 12.) Damages for pain and suffering requires a jury "to evaluate in terms of money a detriment for which monetary compensation cannot be ascertained with any demonstrable accuracy." (*Beagle v. Vasold* (1966) 65 Cal.2d 166, 172.) "Normally, the appellate court has no power to interfere except when the facts before it suggest passion, prejudice or corruption upon the part of the jury, or where the uncontradicted evidence demonstrates that the award is insufficient as a matter of law." [Citation.] (*Ward v. Litowsky* (1970) 5 Cal.App.3d 437, 440.)

Zhang fails to show that the award was insufficient as a matter of law. Dr. Ludwig's testimony that the amount reimbursed for medical services often differed from the amount charged supported the award of past medical costs. Evidence that Zhang's slow recovery was inexplicable combined with two expert's conclusion that he did not suffer from CRPS supported the pain and suffering award of \$10,000. Although Zhang testified that he was unable to work since the accident and his counsel argued that

he should be compensated for his lost earnings, there was evidence that he should have been able to return to work. The jury was not required to credit Zhang's testimony. Zhang demonstrates no error in any of the damage awards.

### **3. *Evidentiary Issues***

Zhang argues the court should have allowed his medical expert to testify and should have admitted evidence of a diagram he prepared.

#### **A. *Medical Expert***

On January 30, 2009, Zhang's counsel sought to designate Dr. Fred Hafezi as an expert witness. The court denied the request. Our record does not include the reporter's transcript from the hearing on Zhang's request. We must therefore presume that what occurred at that hearing supported the trial court's finding. (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1201.) Additionally, Zhang fails to identify the import of Dr. Hafezi's proposed testimony and fails to show that its exclusion resulted in any prejudice to him. Thus, he has not shown that reversal is warranted even if it were error to exclude the proposed testimony. (*Yield Dynamics, Inc. v. TEA Systems Corp.*, *supra*, 154 Cal.App.4th at p. 557.)

#### **B. *Diagram***

Zhang created a diagram with measurements of the parking lot at Mao's Kitchen. Initially, defense counsel objected to the admission of the diagram and subsequently both parties agreed that it would not be admitted. Zhang fails to show that the issue is preserved for appellate review, the diagram should have been admitted, or that he suffered prejudice as a result of its exclusion. The key issues at trial were Zhang's relative fault and the extent of his injuries. The diagram would not have assisted in answering any material question at trial.

### **4. *Alleged Criminal Liability***

Zhang's argument that Li was criminally responsible cannot be raised in this appeal from a civil lawsuit. Zhang filed a civil lawsuit seeking damages for the injury he suffered when Li's car hit his ankle. This was not a criminal lawsuit brought by the

People of the State of California. Therefore, whether Li was criminally liable is not at issue in this case.<sup>3</sup>

## **5. Jurors**

Zhang argues that the court forced jurors to stay on the jury even though they had scheduling conflicts. We find no error.

Trial took place March 4, 5, 6, 9, 10, and 11, 2009. On March 5, Juror L. informed the court that he had travel plans for March 13. The attorneys agreed that trial would be finished by March 13, and the court informed the juror that trial would likely be complete in advance of his travel plans. On March 6, Juror M., an alternate juror, expressed concern that the length of the trial was impeding his ability to run his business. The court refused to excuse Juror M. midway through trial, and counsel for Zhang concurred in that decision. The other alternate juror had surgery scheduled and informed the court that she would be able to return in the afternoon. This juror was allowed to leave for her procedure.

We find no error in retaining the jurors even though they had scheduling concerns. The record indicates the court tried to accommodate Juror L.'s travel plans and the record does not show that the decision to retain Juror L. in any manner affected Zhang. The two alternates were never seated on the jury and their scheduling concerns could not have affected Zhang. In short, Zhang demonstrates no error.<sup>4</sup>

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<sup>3</sup> In his reply brief, Zhang cites *People v. Superior Court (Costa)* (2010) 183 Cal.App.4th 690. That case involved a challenge to the sufficiency of evidence before a grand jury to support charges for second degree murder and is not relevant to this civil case.

<sup>4</sup> An appellant abandons an issue by failing to raise it in his opening brief. (*California Recreation Industries v. Kierstead* (1988) 199 Cal.App.3d 203, 205, fn. 1, superseded by statute on another ground in *Russell v. Trans Pacific Group* (1993) 19 Cal.App.4th 1717, 1727.) In his reply brief, Zhang cites to respondents' counsel's closing argument suggesting Zhang created a version of events for litigation. Zhang faults the court for not correcting respondents' counsel, but we find no error in the argument. Zhang states that respondents' counsel should not have mentioned his tax returns but provides no authority or legal rationale for that claim. Zhang also argues that



## **DISPOSITION**

The judgment is affirmed. Each party is to bear his or their own costs on appeal.

FLIER, J.

We concur:

RUBIN, Acting P. J.

O'CONNELL, J.\*

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respondents' counsel asked Li leading questions, but his counsel did not object to the questions and the issue is not preserved for review. In his reply brief, Zhang for the first time claims that Dr. Ludwig and Dr. Robertson were "invalid" witnesses. After review of the record, we find no error in the admission of the testimony of these expert witnesses.

\* Judge of Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.